

## **ORMD Straw Man Comments**

### **Direct Energy**

[Comment: Direct Energy appreciates the thoughtfulness, time, and effort that the ORMD Staff has so obviously placed into the creation of this consumer protection straw man. Effective consumer protection provisions are integral to the proper functioning of competitive retail energy markets. Effective consumer protection provisions also take into consideration and properly balance any associated burdens they might place on competitive energy providers and the provisioning of competitive retail offers with the potential benefits to be gained by consumers. This balance is evident in many parts of this draft. Below, inserted in blue font, are preliminary comments and questions from Direct Energy. Direct Energy reserves the right to amend, revise, or otherwise add to the comments and questions below. The comments and questions below are meant to further the dialogue on the straw man proposal and may or may not reflect the final positions of Direct Energy regarding this proposal or on any specific proposed provision. ]

### **Dominion**

General comments: Standardize any reference to “electric suppliers” throughout the document. We think it’s premature to discuss fonts, bolding, etc. marketers need to have leeway for creative marketing pieces. We think that, where it is agreed that certain rules or processes need to be conveyed in any marketer’s material, it is not necessary to have a standard statement that all marketers must use. As mentioned above, marketers need to have leeway for creative marketing pieces.

## **2. Applicability**

### **Ameren:**

While Staff has suggested the possibility of using the statutory definition of a small commercial customer at 15,000 kilowatt-hours of electricity annually for purposes of creating the cut-off for various consumer protections, the Ameren Illinois Utilities instead strongly encourage the use of the mass market definition as the consumer protection threshold for several reasons. That is, in the case of the Ameren Illinois Utilities, those customers considered to be eligible for the mass

market are those customers with demands less than 150kW, or stated another way, are those customers in the DS1 and DS2 rate classes.

The Ameren Illinois Utilities believe it makes sense to offer consumer protections to the same population of customers that will be marketed to on a mass market basis. To market on a mass market basis which is based on rate class but to only offer consumer protections based on kilowatt-hour usage will create confusion in the market for RES' and consumers. Not only will this complicate customer communications with different messaging to customers within the same rate class, it will also pose a training burden on the Ameren Illinois Utilities' call centers.

Additionally, the Ameren Illinois Utilities have not planned or estimated for a 15,000 kilowatt-hour usage consumer flag and subsequent processing sub-paths in their design and implementation plans since all design efforts have been focused on the rate class distinctions agreed upon early on in the workshops. This major design issue may compromise work completed to-date, cause implementation roll-out delays and may add significant costs to the project.

Again, for the above reasons, the Ameren Illinois Utilities strongly encourage the use of the mass market definition as the threshold for consumer protections.

## **Constellation**

Constellation recommends that the focus of any new or enhanced consumer protections, including marketing rules, commercial legal or contractual requirements, dispute resolution, reporting requirements, and enforcement mechanisms should be limited to measures to protect residential and small commercial customers that are served by ARES or retail electric suppliers

("RES").<sup>1 1</sup> A RES is an electric utility providing competitive retail electric service outside of their franchised service territory.

The first step in developing or refining appropriate measures must be to clarify the scope and applicability of the proposed legislation or administrative rules. We are pleased that the Strawman attempts to do just that.

As a threshold recommendation, the Strawman proposes the use of the existing statutory definition of “small commercial customer” in the Public Utilities Act (“PUA”) (someone who consumes no more than 15,000 kWhs of electricity annually)<sup>2</sup>

<sup>2</sup> 220 ILCS 5/16-102. as the “cut-off” for the proposed enhanced consumer protections so that they would only apply to ARES or RES seeking to serve or actually serving residential and small commercial customers (with certain limited exceptions). As will be discussed below, we strongly support the ORMD’s recommendation to use the existing statutory definition as not only the starting point, but also believe that it should be the end point, for the applicability of the items contained in the Strawman.

The reasons for applying the proposed new and enhanced consumer protections, marketing rules, commercial legal or contractual requirements, dispute resolution, reporting, and enforcement mechanisms upon ARES and RES serving or seeking to serve residential and small commercial customers can be summed up as follows:

- Will not upset the well-developed competitive retail electric marketplace that currently exists in Illinois;
- Consistent with the existing regulatory and consumer protection regime that differentiates from the level of certification, marketing, and other requirements based upon the size of the customers that the ARES seeks to serve; and
- Consistent with a recently completed legislative package that was adopted for the retail natural gas industry.

As we move from general principle to specific language, any proposed amendments to the PUA and/or the Consumer Fraud and Deceptive Business Practices Act (“Consumer Fraud Act”) should be properly tailored to protect residential and small commercial customers that are being solicited for electric service and served by ARES and RES. To do otherwise would not only add unnecessary costs to other market segments, but would also add requirements that could very well jeopardize the current well-functioning competitive retail electric industry that exists for commercial and industrial customers.

### **Direct Energy**

The 15,000 kilowatt-hour cut-off, while not perfect, does currently serve as a convenient break point in the Public Utilities Act for marketing and certification requirements (See Section 16-115A(d) and (e)).

Please confirm: under the ORMD's proposal, the following proposed sections would be applicable to ARES who serve non-residential customer with greater than 15,000 kWh annual usage. I.1 Training of ARES sales agents

- I.2 Do Not Contact List
- I.3. Customer authorization
- II.4 Assigning customers to a different supplier
- IV.3 Disclosure of ARES' level of customer complaints
- V. Enforcement

The extension of "do not contact lists" to all non-residential customers not just small commercial customers warrants further discussion in the workshop. It is unclear whether there has been a problem with unwanted solicitation among this customer segment; whether this customer segment wants this ability and whether the utilities keep, or are able to maintain, such a list for all non-residential customers. Such lists, by their very nature, limit the ability of customers to hear of potentially beneficial offers and should be used sparingly and with appropriate limitation.

The "disclosure of ARES' level of customer complaints" to include complaint data for all non-residential customers also merits further discussion in the workshop. It is not clear that there exists today sufficient complaint activity to warrant the proposed additional reporting. In addition, it would be instructive if ORMD Staff could elaborate on how they would envision such a metric would be constructed for all-nonresidential customer complaints.

### **Dominion**

Dominion Retail would support the exclusion of all the commercial accounts as a solution to this problem.

Dominion Retail has serious concerns with using the 15,000kWh annual usage without, as is noted above, the utilities providing a customer list. This will also create significant inefficiencies

for marketing to and responding to the “Mass Market” customers. Dominion Retail would support leaving it as is.

Dominion Retail suggests that maybe, for these “larger” commercial accounts (still to be defined), a Waiver (Document or Contract Provision) to these additional conditions, signed or acknowledged by the customer, could be designed.

### **Integritys**

Definition of small commercial - Integritys understands the reasoning behind making the definition of small commercial consistent. However, given that changes in customer usage could move a large customer to small status and a small customer to large status, there needs to be clarity that the treatment of a small commercial customer applies for marketing and enrollment. If a customer’s status changes during the contract there should be no requirement the RES go back and redo the contract. That should be up to the RES and customer not a mandate. For example what happens to a large commercial customer who falls within the small definition while an enrollment is pending? Do they now receive the rescission period? How are contract renewals handled if the customer was large and now defined as small at the time of their renewal?

### **MidAmerican**

Please add language that defines the 15,000 annual usage at the aggregated account level. That way the guard house at an industrial complex does not qualify.

## **Section I: Marketing Practices**

### **1. Training of ARES Sales Agents**

#### **Constellation**

The term “relevant sales agents” needs to be defined. Also, the scope of the “intimate knowledge” needs to be properly tailored. For instance, it make no sense to have now-lawyer sales agents explaining legal terms (such as any “right” to cancel or terminate), interpreting statutes, rules, and regulations.

## **CUB**

Definition - Power and Energy – shall include only supply service priced on a Kwh basis. It shall not include cancellation fees, or other products.

From SB171 for definition of “sales agent.”

Means any employee, agent, independent contractor, consultant, or other person that is engaged by alternative electric supplier to solicit customers to purchase, enroll in, or contract for alternative electric service on behalf of an alternative electric supplier.

## **Direct Energy**

All ~~relevant~~ sales agents engaged in sales activity in Illinois (whether directly employed by the ARES or otherwise exclusively selling the ARES’ electricity supply service) shall be knowledgeable ~~have intimate knowledge~~ of these Retail Electricity Requirements and other relevant statutes, rules, and regulations. All sales agents should be familiar with the supplier’s products and services, including the rates, applicable termination fees if any, payment options and the customers’ right to cancel. In addition, the sales agents shall have the ability to provide the customer with a toll-free number for billing questions, disputes, and complaints, as well as the Commission’s toll-free phone number for complaints. An electric supplier and its sales agents shall not utilize false, misleading, materially inaccurate, or otherwise deceptive language or materials in soliciting or providing services.

Comment: - What other “relevant statutes, rules and regulations” does the ORMD have in mind?

## **Pepco**

Recommendation under “Marketing Practices” to have a definitions section for key terms.

## **Suez**

All relevant sales agents (whether directly employed by the ARES or otherwise exclusively selling the ARES’ electricity supply service) shall have intimate knowledge of these Retail Electricity Requirements and other relevant statutes, rules, and regulations[SENA1].

Recommendation to cite the statute/rules/regulations specifically.

## **2. Do Not Contact List**

### **Constellation**

Any rules adopted implementing this provision should reflect commercial and operational realities regarding the competitive retail electric industry. The rule should reflect the fact that these lists are subject to change, the lag in time between the sending and receipt of mail and other similar commercial realities. As a result, there should not be any retroactive applicability and resulting penalty or other legal right created due to those commercial realities. For example, what would happen if an ARES or RES sent a letter to a potential customer on the 14<sup>th</sup> of the month and on the 15<sup>th</sup> of the month found out that this potential customer is now on the Do Not Contact List? Similarly, certain ARES or RES may utilize the services of outside sale agents or sales channels. Any rules adopted pursuant to these rules should provide a commercially reasonable amount of time for the ARES or RES to distribute such lists after receipt from the electric utility.

### **Direct Energy**

Comment: This proposed section largely tracks Section 19-115(g)(4) Illinois SB171 Enrolled (the Illinois gas consumer protection bill).

### **Integrays**

Integrays would like to clarify that the requirement to obtain the Do Not Contact List each month applies only if the RES is actively telemarketing to customers. If the RES is not doing outbound calling they are not required to obtain the list.

### **MidAmerican Energy**

Since the Illinois electric choice statute prohibits release of specific customer information without customer consent, the concept behind the gas "do not call" list issue is moot. MidAmerican would prefer to simplify this concept by limiting marketing efforts to customers who are not on the "National Do Not Call" list, a protection that is already in place.

### **Suez**

An electric supplier and its sales agents shall refrain from any direct marketing or soliciting to

residential consumers on the electric utility's "Do Not Contact List", which the electric supplier shall obtain on the 15th calendar day of the month from the electric utility. If the 15th calendar day is a non-business day then the electric supplier shall obtain the list on the next business day following the 15th calendar day of that month.

### **3. Customer Authorization**

#### **Direct Energy**

#### **Customer authorizationRecords Retention and Availability**

Comment: We would suggest changing the heading because the substance of requirement is broader than simply authorization.

#### **Pepco**

Recommends consistent use of term “electric supplier” or “alternative electric supplier”

### **4. In Person Marketing**

#### **Direct Energy**

Comment: The standards set forth for in person marketing appear in many respects to be more prescriptive than the framework set forth in Section 19-105(c) of SB 171 Enrolled for the gas industry. It would be helpful if the ORMD could elaborate on why they believe a more prescriptive approach is desirable for the electric industry.

Would the customer be required to initial a uniform disclosure statement if similar information is being recorded in a TPV process?

Section 2N of the Consumer Fraud and Deceptive Business Practices Act deals with non-English language transactions. The existence of Section 2N would seem to obviate the need for much of (iii).

#### **Dominion**



Could the disclosure information be included in an Environmental Disclosure Statement, as another alternative?

Dominion Retail assumes that a marketer would not be prevented from leaving all the appropriate solicitation material in the customer's own language for a customer-initiated enrollment.

Last sentence:

The sales agent must have a person's name added to the ARES's Do Not Contact List upon the authorized person's request.

Section 2N of the Consumer Fraud and Deceptive Business Practices Act, were we told that this was a cut and paste from another state?

Dominion thinks that this is overkill.

### **Ingegrys**

Integrys would like to clarify that only after the sale is complete the customer would be left with the required information. If the customer rejects the sale and the sales person is asked to leave the sales persons are not required to continue to provide the information to the customer.

Integrys uses a telephone interpretation service. Therefore in this instance the interpreter would not be present to sign a form but would be over the phone. We would request the rule be amended to instead have the customer indicate on a contract that an interpreter was used and they agreed to that interpreter rather than also requiring the interpreter to sign something.

### **MidAmerican**

Suggested clarification:

(ii) **At the time a customer elects to enroll with the supplier**, the sales agent **must** read to the customer all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below. Additionally, the sales agent **is required to leave a copy of the** written uniform

disclosure statement with the customer, which shall be a separate document from the Letter of Authorization. The Letter of Authorization shall contain a statement that he customer has read and understood the terms and conditions contained in the uniform disclosure statement.

## **Pepco**

Recommend consistent use of “sales agent” or “marketing agent” and definition of. Does it mean an agent that meets with the customer and brokers the deal or only an employee of the company

- (ii) The sales agent has to read [w2] to the customer or allow the customer time to read all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements [w3] section below. Additionally, the sales agent must require the customer to initial the written uniform disclosure statement, of which a copy is to be left with the customer at the conclusion of the sales visit. The uniform disclosure statement should be on the first page of the sales contract or a separate document.  
(comment that separate documents tend to disappear)

## **Suez**

### **1. In-Person Marketing[SENA4]**

(i) Sales agents who contact residential customers in person at a location other than the electric supplier's place of business for the purpose of selling any product or service offered by the electric supplier are required to produce identification, to be visible at all times, which a) prominently displays in reasonable size type face the full name of the marketing representative, b) displays a photograph of the marketing representative and c) depicts the legitimate trade name and logo of the electric supplier they are representing. This identification has to be presented as soon as possible and prior to describing any products or services offered by the electric supplier. The sales agent must remove the person's name from the marketing database upon that person's request.

- (ii) The sales agent has to read [SENA5] to the residential customer all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is

contained in the uniform disclosure requirements section below. Additionally, the sales agent must require the customer to initial the written uniform disclosure statement which is to be left with the customer at the conclusion of the sales visit. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document. ARES that are affiliates of electric utilities should not describe or disclose their relationship to the utility unless such information is specifically requested by the customer.

(iii) Where it is apparent that the **residential** customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the sales agent or where the customer or another third party informs the sales agent of this circumstance, the sales agent shall either find a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead, use an interpreter at the premise, or terminate the in-person contact with the customer. When the use of an interpreter is necessary, the customer and the interpreter must sign a form consistent with Section 2N of the Consumer Fraud and Deceptive Business Practices Act. The sales agent shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises.

## **5. Telemarketing**

### **Direct Energy**

Please confirm the reference to the Telephone Solicitations Act. Is the reference to Section 15 of the Act, 815 ILCS 413? The provisions of the Telephone Solicitations Act would appear to apply without incorporation in an ICC applicable rule, tariff or statutory provision.

How does Section 2N of the Consumer Fraud and Deceptive Business Act (which deals with non-English Language transactions) interplay with proposed subsection (ii) above-- could a third party be used an interpreter in this situation?

### **Dominion**

We believe that this section should be labeled Outbound Telemarketing and that another section should be added for Inbound Telemarketing, similar to other states.

## **Integritys**

Integritys would like to clarify that the written disclosure and sales contract are sent to the customer within 3 days of the customer enrollment vs. the utility processed enrollment from the supplier. The current rule simply says enrollment which could mean either.

## **Suez**

(i) In addition to complying with 815 ILCS 15 (Telephone Solicitations Act), ARES sales agents who contact **residential** customers by telephone for the purpose of selling any product or service shall provide the sales agent's name and, on request, the identification number;

(iii) The sales agent has to read **to [SENA6]** the customer all items within the uniform disclosure statement. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below.

Additionally, the sales agent must require the customer to verbally acknowledge that he or she understands the uniform disclosure statement. The written disclosure statement must be mailed to the customer within 3 business days of the enrollment. The uniform disclosure statement can be either part of the first page of the sales contract or a separate document. ARES that are affiliates of electric utilities should not describe or disclose their relationship to the utility unless such information is specifically requested by the customer.

## **6. Direct Mail**

### **Direct Energy**

Each ARES that contacts customers for enrollment by direct mail shall include a uniform disclosure statement for. ~~If the ARES, at the time of the mailing, offers more than one product or service to the customer class being solicited, the ARES must provide a separate uniform disclosure statement for those products and services as well.~~ The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below. If a written The Letter of Authorization is being used to verify the subscriber change, it

shall contain a statement that the customer has read and understood the terms and conditions contained in the uniform disclosure statement. The uniform disclosure statement must be printed on a document that will stay with the customer and is not required to be mailed back to the electric supplier.

Comment: ARES should only be required to provide in a mailing a uniform disclosure statement for the product(s) offered in the mailing. The proposed language could be read to require ARES to provide a customer with all possible offers that the ARES might have available.

### **Integrys**

Leaving the initialed copy of the uniform disclosure statement with the customer makes no sense. The initialed copy should go back to the RES as proof the uniform disclosure statement was provided to the customer. We agree a copy should be left with the customer but if there is a requirement the customer initial the document as a RES we would prefer to keep that copy for our records. We are not recommending carbon copies which would be difficult to administer and costly.

Integrys does not support a separate disclosure statement for each product. This is not only redundant but creates huge bulk mailings. We may be interpreting this too literally but it appears that any direct mailing would consist of several pages of information for all products. A simpler approach would be to allow the supplier to refer the customer to a website or customer service number for a full list of products.

### **Suez**

Each ARES that contacts **residential** customers for enrollment by direct mail shall include a uniform disclosure statement. If the ARES, at the time of the mailing, offers more than one product or service to the customer class being solicited, the ARES must provide a separate uniform disclosure statement for those products and services as well.

## **7. Online Marketing**

### **CUB**

Third Party Verification – Planning on using language in SB 1299?

### **Direct Energy**

Comment: Any online marketing requirements for ARES should be reviewed in conjunction with the language in SB 171 Enrolled (gas consumer protection legislation). Consistent requirements should be pursued to the greatest extent possible to minimize financial and programming burdens on suppliers who intend to offer both commodities via their Internet web sites.

### **Dominion**

Dominion Retail thinks there should be a distinction between unsolicited and solicited Online Marketing. Solicited would require a key (like a promo code) that was included in the solicitation. This will eliminate the need for entering many of the data fields required below, they could be pre-populate.

Should also require the utility name (probably a drop-down). This will help eliminate the effects of overlapping zip codes.

Dominion Retail would keep the Disclosure/T&C document the same for Direct Mail, Telemarketing, Door to Door and Internet sales to manage Version Control.

#8 - Dominion Retail would, for consistency purposes, drive these customers to our toll free phone #.

### **Integrays**

We would like to clarify that it is just the product description that must be less than 2 pages and not the entire contract.

### **MidAmerican**

Please add "service territory (LDC), annual or monthly billing (in dollars and/or usage)" after 'zip code' so the supplier can determine the product best suited to the customer's current usage.

### **Pepco**

Each ARES that offers retail electric products for enrollment on its website shall prominently display the full description [w7] for any products offered without the consumer having to enter any personal information other than zip code and type of service being sought (residential or commercial).

Asks what “full description” means and that need to outline all items to be disclosed.

### **Suez**

(1) All items within the uniform disclosure statement for residential customers. The minimum list of items to be included in the disclosure statement is contained in the uniform disclosure requirements section below.

## **Section II: Rescission/Early Termination and Automatic Renewal of Contract**

### **1. Rescission of sales contract**

### **CUB**

Customer shall also have 20 days from receipt of the first bill which includes supplier charges to cancel contract without penalty, including after the end of any introductory discount period.

### **Direct Energy**

Comment: SB 171 Enrolled (gas consumer protection) uses 10 business days from the date of the utility notice.

### **Suez**

#### **1. Rescission of sales contract [SENA8]**

Within one business day after receiving a valid electronic enrollment request from the electric supplier, the electric utility will notify the customer in writing of the scheduled enrollment and the name of the electric supplier that will be providing power and energy service. If the residential customer wishes to rescind its enrollment with the supplier, the customer will not incur any early

termination fees if the customer contacts either the electric utility or the electric supplier within ten calendar days of the electric utility's processing of the enrollment request. If the tenth calendar day falls on a non-business day the rescission period will be extended through the next business day. The written enrollment notice from the electric utility will state the last day for making a request to rescind the enrollment. **This rescission period will not apply to non residential consumers.**

## **2. Early Termination Fee**

### **CUB**

Early termination fees shall not exceed \$50 and the utility shall not be obliged to purchase such receivables arising from termination fees. It is the responsibility of the supplier to collect such fees, if any are collected.

### **Direct Energy**

Comment: None at this time.

### **Suez**

Any **residential** sales contract that contains an early termination fee shall disclose the amount of the early termination fee, **or** [SENA9] the method of calculating the termination fee, **as** applicable. It must also state that the early termination fee does not apply if the **residential** customer cancels the contract within the rescission period described above.

## **3. Contract expiration and renewal offers**

### **CUB**

(iii) No contracts may contain automatic renewal clauses.

### **Direct Energy**

Further explanation by the ORMD would be helpful as to why no termination fee should apply from the date the contract expiration notice is sent.



Given the proposed rule, does an ARES have to receive affirmative consent from a customer in order to provide a new fixed rate at the end of the initial term that stays fixed for greater than 31 days?

The Automatic Renewal Act does not appear to contain a maximum limitation of 31 days. Further explanation by the ORMD would be helpful as to why such a limitation was chosen.

### **Dominion**

Dominion Retail suggests that an expiration notice and a renewal offer each have its own subsection so the actions to be taken are clear.

(ii).

- (1) Different notice for a Renewal offer.
- (2) More flexible terminology (...with the end of your meter reading on month/year) but still accurate.
- (3) Dominion Retail would note that there would be no cancel fee for termination or renewal of the contract. We would not want to be constrained in the exact language to be used.
- (4) Dominion Retail would send new T&Cs if there were substantive changes to the existing T&Cs, as we do today.
- (5) Similar to our response on rescissions, Dominion Retail would drive customers to a toll free phone #. Their tariff and ARES shopping alternatives will be explained to them at that time, where they will also have a chance to ask questions. We would not want to place this on a renewal offer letter, but would on an expiration letter.

(iii) (Example – fixed price) Dominion Retail would issue a Renewal Offer Letter to existing customers within the timelines outlined above. These offers would not be subject to a cancel fee and the new price and term will be specified in the letter. The original T&C will explain how this process will occur at renewal time. With a cancel at any time provision for the renewal price / term the rate is effectively a month-to-month rate with the obligation on DR to provide the price to the customer until the end of term. If any other terms or conditions of the original contract are changed, the customer's consent is needed.

### **Integrus**

- (1) Integrys would prefer the outside of the envelope say “Agreement Renewal Notice” rather than “Contract Expiration Notice” if the contract is being renewed.
- (2) We would prefer the meter read month/year be an option rather than a specific expiration date given that a meter read change could affect the contract expiration date.
- (3) This provision would allow a customer to cancel their contract without penalty months before it is over. If the intent was a customer could leave their renewal contract without penalty during that period then we agree however the way this section is written it gives the customer an early out of their existing contract.
- (4) the addition of affirmative action in this section should be written as “... what if any affirmative action...”. Some contract renewals may not require any affirmative action on the part of the customer to renew.
- (5) We would like to clarify that the customer switch is after contract expiration and not that they switch while their current agreement is in effect. In addition, the renewal every 31 days is confusing and impossible to comply with. According to this section a supplier would be constantly sending notices to the customer. In addition, this eliminates a fixed price renewal option for the customer.

### **MidAmerican**

- (i) A fifty-day contract expiration date is prohibitive for mass market products that discount off the utility rate. The utility rate is not set 50 days prior to the May meter read date each year. This prohibits a supplier from making a potential renewal offer rather than terminating the contract, ultimately limiting customer options. A 30-day notification period allows the supplier to evaluate an offer (knowing the utility rate) and also gives the customer a full 20 days to switch to another supplier (assuming the 10-day rescission period).
- (ii.5) Would it be more helpful to tell the customer when they would need to select another supplier before they return to the utility? Forty-five days can be misleading—as long as the customer enrolls 10 days prior to their meter read date—they can switch to another supplier.
- (iii) Limiting evergreen renewal clauses to 31 days will likely limit renewal clauses to monthly, market based rates. MidAmerican recommends expanding these options to give suppliers more flexibility in renewing customers on the same type of product the customer originally enrolled.

For example, evergreen clauses for up to 12 months are allowed if:

The customer is allowed to cancel, without penalty, up to 60 days under the renewal offer, OR

The customer termination fee to exit the agreement is equal to or under \$150/per account.

### **Pepco Energy**

i) The ARES shall send a notice of contract expiration separate from the bill at least 45[W10] days prior to the date of contract expiration but no more than 90 days in advance of expiration.

Changes 50 to 45 because 50 is an odd number and 45 is a more uniform requirement.

iii) If a customer's sales contract includes an automatic renewal clause, an ARES may automatically renew the customer consistent with the automatic renewal clause in the contract and consistent with all the relevant provisions outlined in this section and 815 ILCS 601/10 (Automatic Contract Renewal Act). Any service renewed through the use of an automatic renewal clause[W11] (Evergreen Contract) shall be in effect for a maximum of 31 days and may be repeatedly used, unless the customer cancels the service. The pricing for an automatic renewal after the term of the original contract may be different than the pricing for the original term, but must be communicated to the customer [W12]and permitted by this section and consistent with the original contract.

Asks how should be communicated to customer i.e. in the same manner as the original enrollment?

### **Suez**

i) For residential consumers, the ARES shall send a notice of contract expiration separate from the bill at least 45 days prior to the date of contract expiration but no more than 60 days in advance of expiration. Nothing in this section shall preclude an ARES from offering a new contract to the customer at any other time during the contract period, provided that the change will benefit the customer. Notices can be sent to non-residential consumers if the ARES chooses, but the ARES is not required to do so[SENA13].

## **4. Assigning customers to a different supplier**

### **CUB**

Supplier may not assign customers to a different supplier unless abandoning service as an ARES. (Section 16-115)

5) Cancellation fee clauses are automatically voided if contract is transferred to another supplier.

### **Constellation**

With mergers and acquisitions and other normal transactions that occur in the retail electric industry, the ability to assign contracts is a very important contracting element that is governed by retail contracts in general. In addition, the written notice requirement in sub condition (3) may not be feasible or allowed for publicly traded companies due to standard non-disclosure laws or requirements as well as standard provisions in agreements concerning mergers, acquisitions, or other similar commercial transactions.

Overall, while the four (4) proposed conditions regarding the ability of an ARES to assign agreements do not appear to be overly onerous, Constellation does not see any rational basis to impose this requirement on all customers served by ARES. It has been our experience that commercial and industrial customers are sophisticated enough to address similar concerns during contract negotiations. Again, this type of protection appears more appropriate for residential and small commercial customers.

### **Direct Energy**

#### **Comment:**

No comment at this time.

### **MidAmerican**

Will this only be permitted to happen when a supplier goes out of business, or can suppliers assign customers on a routine basis?

## **Pepco Energy**

(2) the rates, terms, and conditions of the agreement being assigned do not change during the remainder of the time covered by the agreement or if the rates or material terms and conditions do change, the customer agrees to the change in any material term or condition or, can switch suppliers with no early termination fee, if the customer is assigned to a different supplier.;

## **Suez**

### **Assigning customers to a different supplier[SENA14]**

Asks ORMD to define “assign” as the process by which an ARES sells its book to another ARES. Clarify that it does not mean “switching”.

## **Section III: Uniform Disclosure Requirements**

## **CUB**

- 4) The charges for the service for the length of the contract on a price per Kwh basis: if any charges are variable during the term of the contract, an explanation of how the variable charges are determined;
- 5) The length of the agreement including the automatic renewal clause, if any (CUB Strikes this underlined clause)
- 6) The presence or absence of early termination fees or penalties, provided they do not exceed \$50. ;and applicable amounts or the basis on which they are calculated (CUB strikes this underlined section)
- 7) Any possible requirement to pay a deposit and the estimated amount of the deposit or basis on which it is calculated: (CUB strikes this underlined section and states - This is the utility’s purview. Not the suppliers.
- 10) A statement that the customer may rescind the agreement within ten calendar days of receipt of switch letter or within 20 days of receiving first utility bill with supplier charges included by calling either the electric supplier or the utility and provide both phone numbers;
- 15) If a “green product” is marketed or sold to consumers a disclosure statement addressing the fuel mix and emission profile of customers’ supply must be included. Fulfillment of requirements under the Renewable Portfolio Standard does not make a suppliers’ product “green.”

## **Direct Energy**

Comment: No comment at this time.

## **Dominion**

Although Dominion Retail has preferences for what could be included in a disclosure statement, we do not oppose any ARES' voluntary inclusion of any item they deem important to them.

As we discussed at the last meeting, Dominion Retail, as a mass mailer, considers many of these items redundant, maybe up to 3 or 4 times. A disclosure statement, similar to the Credit Card Schumer Box, as we understand it, is supposed to help the customer summarize the more pertinent points of an agreement and not create so much paperwork and reading that it frustrates the customer to "just sign up" without reading the T&Cs or just throw all the paper away. For Dominion Retail, items 1, 2, 3 will already appear on our letter, T&Cs & Q&A, Environmental Disclosure. So with the disclosures at the top of the T&Cs these should not be required within the disclosure statement.

Item (11) - We feel that an ARES shouldn't have to tell potential customers who we aren't, but who we are. Except for unregulated affiliates of utilities in the state where the name and or logo could be mistaken by a customer as the utility itself.

Item (12) – Dominion Retail, in other markets, has explained this in letters, T&Cs or Q&As. Although this could be conveyed, we don't feel that it necessarily needs to be included in the disclosure statement.

Item (13) – Dominion Retail, in other markets, has explained this in letters, T&Cs or Q&As. Although this could be conveyed, we don't feel that it necessarily needs to be included in the disclosure statement.

Items (4, 6, 7, 8, 10 and 14) – Dominion Retail has no problem with these.

## **Integrus**

Integrays questions whether the total information required in the disclosure can be fit using a 12 point font.

(11) – How is this to be applied in an endorsement program or a program when the supplier is the chosen/preferred supplier for a group or government entity?

### **MidAmerican**

If all 14 of these points are specifically covered in the supplier's sales contract with the customer, or read aloud during a telemarketing call, MidAmerican believes that the customer is in full possession of the knowledge needed to switch energy suppliers and no additional separate document is needed.

### **Pepco**

1) The legal name of the supplier;[W15]

Suggests uniformity in terms.

7) Any possible requirement to pay a deposit and the estimated amount of the deposit or basis on which it is calculated[W16];

Will the deposit be returned during the contract term and will it accrue interest?

### **Suez**

In addition to providing a copy of the sales contract, electric suppliers must disclose the following information prior to enrolling the residential customer[SENA17], regardless of the form of marketing used. The written uniform disclosure statement must use a font of 12 point or larger and, if a separate document, must not exceed two pages in length.

## **Section IV: Dispute Resolution/Customer Complaint Reports**

### **1. Required Supplier Information**

## **Dominion**

Dominion Retail would provide a toll free phone # and e-mail address but would not provide a name since this would be a rotational position.

“...any vagueness, obscurity, or ambiguity...” - Dominion Retail does not believe that this statement is necessary in this document. The normal resolution process for both the customer and the ARES should be sufficient to determine the outcome.

Dominion Retail would like more clarity on having to file changes in any of the documents, etc., especially in regard to contracts. There will be many different variations on contracts based on the product being offered. It doesn't seem reasonable to require changes for all.

## **Direct Energy**

The electric supplier shall provide Commission Staff with a copy of its bill formats (if it bills customers directly as opposed to using utility consolidated billing)~~is a billing party~~, standard customer contract and customer complaint and resolution procedures.

Comment: When must these documents be first filed?

## **Integrus**

This section is unclear on who will determine vagueness or ambiguity in a contract. ICC staff, ICC legal counsel, etc.?

## **Pepco**

The electric supplier shall provide Commission Staff with a copy of its bill formats (if it is a billing party), standard customer contract and customer complaint and resolution procedures<sup>[w18]</sup>.

Should this item really be in the master sales contract itself?

## **Suez**

### **1. Required Supplier information**



The electric supplier shall provide Commission Staff with a copy of its bill formats, standard customer contract and customer complaint and resolution procedures. It should also provide the name and telephone number of the company representative whom Commission employees may contact to resolve customer complaints and other matters. In any dispute between a customer and an ARES concerning the terms of a contract, any vagueness, obscurity, or ambiguity in the contract will be construed in favor of a residential customer[SENA19]. The supplier must file updated information within 10 business days after changes in any of the documents or information required to be filed by this section.

## **2. Dispute Resolution**

### **Direct Energy**

Why should a non-residential customer with usage greater than 15,000 kWh annually be able to file a complaint at the ICC if dissatisfied with the results of the alternative dispute resolution?

If the complaint is resolved on a three-way call, and no adjustment to the bill is being made, please explain why the supplier should notify the utility of the resolution of the complaint?

Does the provision to cancel disputed charges above track with any related processes envisioned by the CPWG?

### **Dominion**

(ii) Dominion Retail does not accept complaints in person nor transact any business with a customer at its offices. Dominion Retail suggests that the customer be referred to the ICC Staff (ORMD?) for problem resolution, as discussed below. This way we can develop consistent handling and recording of issues and resolutions. This is how it is handled in other jurisdictions.

(iii) (B) The Commission's Consumer Services Division may resolve a complaint via phone by completing a [two or] three-way call between the customer, the Consumer Services staff and [/or] the supplier. If the complaint is resolved on a three-way [this] call, the supplier shall notify the utility of the resolution.

As discussed at the last meeting, Dominion Retail thinks that at such point in the resolution process that the ICC Staff (ORMD) indicates that, in their opinion, an adjustment needs or may need to be made, the ARES will submit the appropriate transaction to the utility for the adjustment and the cash affect will flow through the normal POR process. The ARES will e-mail the utility to inform them of this situation, for their records. As Torsten commented at the last meeting, we would expect these to be cleared up within a short period of time.

(E)The Commission shall review the complaint information and the electric supplier's response and notify the complainant [and ARES] of the results of the Commission's investigation.

As Torsten commented at the last meeting, we would expect these to be cleared up within a short period of time.

### **Integrys**

Section IV. 2. iii (1)(A) – It should be enough to simply provide the customer with the information needed to contact the ICC. Walking the customer through the complaint procedures should be through the ICC. If a customer is annoyed enough to want to contact the ICC to complain it is more likely that going on and on about what they will need to complain will seem as though we are discouraging them or making it difficult for them to reach the ICC if the supplier is the one passing on this extra information.

Section IV. 2. iii (1)(B) – Integrys would like this section clarified to mean only those complaints within the supplier's services. For example complaints related to incorrect meter reads, high usage, or other items not part of a supplier service should not become a supplier complaint. In addition, if the complaint had nothing to do with the utility and was resolved the supplier shouldn't have to inform the utility of the resolution if the complaint did not originate with or involve the utility.

Section IV.2. iii (1)(C) - Is this intended to be a separate email from our customer service email or can it be the same?

### **MidAmerican**

MidAmerican objects to the proposal that the supplier must notify the utility that it has resolved a complaint on a 3-way call, unless there is a similar provision that the utility would notify a supplier of a similar dispute and resolution. Suppliers in the UCB/POR world should argue about whether a utility can remove the charges, or whether it is the supplier's requirement.

### **Suez**

(ii) **Complaints to electric suppliers.** A customer or applicant for service may submit a complaint in person, or by letter, facsimile transmission, e-mail, or by telephone to an electric supplier. The electric supplier shall promptly investigate and advise the complainant of the results within 14 calendar days[SENA20]. If the electric supplier does not respond to the customer's complaint in writing, the electric supplier shall orally inform the customer of the ability to obtain the electric supplier's response in writing upon request. A customer who is dissatisfied with the electric supplier's review shall be informed of the right to file a complaint with the Commission and the Office of Attorney General.

## **3. Disclosure of ARES' level of customer complaints**

### **Constellation**

Constellation has a number of questions about the specific type of reporting that is sought with this proposed requirement:

What is meant by the term "complaints"? For example, would a call inquiring about a specific charge on a bill be considered a complaint? Similarly, would a call inquiring about the distribution portion of the bill be considered a complaint? Would the answer be different if the ARES was or was not an SBO supplier?

Is the requirement seeking to substitute a monthly customer call center report in the place of the current annual call center requirement?

In any event, with greater specificity, such a reporting requirement may have some value for ARES seeking to serve or serving residential and small commercial customers. However, based upon the fact that there have been virtually no complaints against ARES or RES since the advent of retail competition over 9 years ago, there has been no demonstrated need or value for that type of enhanced consumer protection for larger commercial and industrial customers and

reporting obligation on the part of ARES and RES. No similar requirements are imposed in the natural gas or telecommunications industries in Illinois, especially for competitive providers serving or seeking to serve commercial and industrial customers.

### **Direct Energy**

Do electric utilities currently submit to the Commission the report proposed in the draft?

### **Dominion**

This type of formal filing is not required of us in any other state. At most, an annual filing should suffice.

Dominion Retail maintains a file of complaints with ICC and CUB intervention. If required, we could provide a list of these current complaints and their resolution status with the appropriate details.

Dominion Retail will reserve comment on any format, calculation, presentation and explanation of this data.

### **Integrys**

Integrys asks that the report be submitted quarterly rather than monthly. In addition, there needs to be more definition around the types of complaints to be reported. For example, a customer calling to verify their enrollment only to find out they rescinded with the utility should not be a complaint. As written whether or not a customer call is a complaint or a request for information is within the discretion of the supplier and could lead to very different reporting practices.

Integrys recommends that any more formal complaints which go to the ICC, which are within the responsibility of the supplier services and which are truly a complaint and not an inquiry should be the reportable items.

### **MidAmerican**

MidAmerican objects to disclosure of ARES complaints, as utilities are not required to submit such reports. Which complaints does Staff believe need to be published, as this is not identified here; all disputes, all informal and formal Commission complaints? Will the customers know that when they file a complaint, it will become public on a web site, because I believe they will object to confidential billing matters becoming a focus of public scrutiny?

ii) As a follow-up to the previous paragraph, MidAmerican is not comfortable with the Commission Staff preparing a consumer complaint report and developing a ranking system for supplier complaints.

Overall, suppliers must minimize processing and administrative costs to make any money in these small markets, and additional marketing, billing, and reporting requirements all add to this burden. A process for customer complaints currently exists with the Consumer Services staff to address customer concerns, which have been minimal at worst. Try not to over-engineer for this market.

### **Pepco**

i) All ARES are required to submit to the Commission a monthly report of all complaints received and resolved during the month, **unless no complaints were received during that month by the supplier**. The monthly complaint report shall be provided to the Commission no later than the 15th day of the following **month**[W21].

For many suppliers this is an onerous requirement. A filing should only be required if a complaint is received during that month.

### **Suez**

i) All ARES are required to submit to the Commission a monthly report of all **complaints**[SENA22] received and resolved during the **month**[SENA23]. The monthly complaint report shall be provided to the Commission no later than the 15th day of the following month.

Clarify what constitutes a complaint. Does it include all complaints received directly from customers? The ICC already has a record of informal and formal complaints at the Consumer Services Division.

Clarify the monthly report is not public.

ii) The Commission shall, on a monthly basis, prepare a “consumer complaint report” to be posted on its website for public use. The report shall be in an easy-to-read and user friendly format. The Commission shall develop a ranking system

of individual ARES' complaints ratios in comparison with an ARES-wide complaint ratio, as well as the associated ranking methodology<sup>[SENA24]</sup>.

What is the methodology for ranking? For example, if an ARES receives 10 complaints at the ICC but all are investigated and resolved with the determination the no violation occurred, and ARES should not have a ranking that reflects 10 complaints.

## **Section V: Enforcement**

### **CUB**

Disconnection-In the event a customer is disconnected by utility company and has a valid contract with a supplier, the customer shall automatically revert to utility supply at time of reconnection and contract shall be considered void. No cancellation fees may be collected by supplier in this scenario.

### **Direct Energy**

A mechanism available to address repeated violations of the ICC's code of conduct for ARES is worth pursuing. However, the proposal set forth above raises a number of concerns and questions. For example:

- a. As proposed, how does the initial notification / 48 hour opportunity to cure work? Is it the intent of the ORMD that an "other party" could provide this notice and "opportunity to cure" without first informing the ICC?
- b. What protections are afforded to suppliers from abuse of this provision by "other parties"?
- c. A supplier has must respond within 7 days after the complaint is filed but should a supplier decide to engage in discovery to prepare its response to the complaint discovery responses aren't due until 14 days after the request is made.
- d. As written, the emergency relief proposal appears to contemplate "directives." What sort

of “directives” does the ORMD believe might be issued in an emergency relief order?

### **Dominion**

This whole section is a bit confusing. Does Staff or an aggrieved customer automatically get to invoke "expedited" additional procedures? There needs to be some bounds to this process or it will be abused. In that sense, it's not reasonable as written. Also, the expedited procedural timeline is way too fast.

### **Integrus**

Integrus would recommend the 48 hours be increased to 5 business days. 48 hours is a very short period of time to implement technical or process changes which may be required.